IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
March 25, 2009 Session

STATE OF TENNESSEE v. CHARLES W. GEE

Appeal from the Criminal Court for Monroe County
No. 06-476 Amy Reedy, Judge

No. E2007-01363-CCA-R3-CD - Filed June 12, 2009

The defendant, Charles W. Gee, appeals from his Monroe County Criminal Court convictions of fraudulently submitting an insurance claim of $60,000 or more, *see* T.C.A. § 39-14-133 (2003), arson, *see id.* § 39-14-301(a)(2), and conspiracy to commit arson, *see id.* §§ 39-12-103, 39-14-301(a)(2). He argues that the trial court erroneously failed to give a jury instruction expressing disfavor toward unrecorded extrajudicial confessions. Further, he argues that his eight-year effective sentence was excessive and that the trial court erred in considering the defendant's lack of remorse in determining that he was not amenable to rehabilitation. Upon review of the record, we find that the defendant has waived his jury instruction issue and that the trial court appropriately sentenced the defendant. Discerning no error, we affirm the judgments of the trial court.

Tenn. R. App. P. 3; Judgments of the Criminal Court Affirmed

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and D. KELLY THOMAS, JR., J., joined.

Charles G. Currier, Knoxville, Tennessee, for the appellant, Charles W. Gee.

Robert E. Cooper, Jr., Attorney General and Reporter; John H. Bledsoe, Assistant Attorney General; Jerry N. Estes, District Attorney General; and Andrew Freiberg and James H. Stutts, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

Trial Evidence

At approximately 11:30 p.m. on September 13, 2005, Madisonville Fire Department Chief John Tallent received a call reporting a fire at 459 Oak Grove Road. Upon Chief Tallent's arrival, much of the home was "fully involved," but firefighters extinguished the fire by 3:00 a.m. Upon examining the burned home, Chief Tallent noticed patterns indicating the use of an accelerant, and he reported the fire as a possible arson to the Tennessee Bomb and Arson Section.

The residence belonged to the defendant; however, the defendant did not reside at the property and had leased the home to James Odum through a written lease. The defendant maintained a homeowner's insurance policy through Travelers Insurance, and Mr. Odum, as required by his lease agreement, had acquired a renter's insurance policy.

Gary Young, a fire cause and origin investigator for a private company contracted by Mr. Odum's insurance company, noticed the odor of kerosene and gasoline and observed pour patterns at the site. He also collected debris for later examination. Although he found a kerosene heater in the home, he concluded that the heater was not in operation and could not have been the source of the fire. Mr. Young also found evidence of melted fuel containers. The laboratory that examined the debris samples submitted by Mr. Young identified evaporated gasoline and kerosene. Mr. Young determined the nature of the fire to be incendiary based upon the arsonist's attempt to make the fire appear accidental, the amount of fuel used, and the use of a mixture of igniting fuels[1] which showed that the arsonist had knowledge and experience.

Ray Boeing, a fire cause and origin investigator for Travelers Insurance, investigated the scene of the fire after Mr. Young. Mr. Boeing observed burn patterns and obtained samples from the debris for analysis by his company's laboratory, which found the presence of accelerants consistent with kerosene. He also opined that the fire was incendiary. Stewart Webster Bayne, the defendant's expert fire origin investigator, also agreed that the fire was purposely set.

Ann Phillips served as the defendant's real estate agent when he attempted to sell the house in question. She had listed the defendant's house on the market for approximately one year. She had found a buyer for the house, and the house was scheduled to close for a sale price of $95,000 on September 14, the day after the house burned. Although the sales contract required that any existing renter move out of the house a week before closing, she learned that Mr. Odum remained at the house until the day of the fire.

John Long, an exterminator hired by Ms. Phillips to inspect the home for termites in preparation of the home's sale, visited the house between 7:00 and 8:00 p.m. on September 13, 2005. He did not recall seeing or smelling either gasoline or kerosene and did not see any kerosene heaters in the home.

The defendant arranged his insurance through his bank, BB&T, and he called the bank to report the destruction of his home and to collect the proceeds from his insurance policy. Jim Tullis of Travelers Insurance Company handled the defendant's claim for the loss of the home. After meeting with the defendant, he approved a check on October 13, 2005, to the defendant for $123,000. Travelers also made a payment covering the contents of the home in the amount of $485.

[1]Mr. Young explained that gasoline is very explosive while kerosene burns at hotter temperatures. He stated that less-experienced arsonists tend to use gasoline, which is difficult to control, and that kerosene is difficult to ignite but better suited for prolonged fires.

Stephanie McFail, the defendant's banker at the BB&T branch in Madisonville, described the defendant as a frequent bank customer who made several business loans and deposits with her. On October 17, 2005, the defendant deposited a check for $123,000 from Travelers Insurance. Upon depositing the money, the defendant paid the remainder of his mortgage on the burned home in the amount of $79,747.20. The defendant also withdrew $9,999.99 in cash during this transaction. Ms. McFail stated that a withdrawal of $10,000 or more would have required the filing of a currency transaction report with the federal government. At the time of trial, the defendant had an outstanding business loan for his tractor-trailer truck.

Agent Daniel Foster of the Tennessee Bomb and Arson Section, after receiving notice of the fire, reviewed the scene and observed a fire pattern indicating arson. He first interviewed the defendant on September 20, 2005. In that interview, the defendant stated that he was in New York when the house burned. The defendant suggested to Agent Foster that Mr. Odum may have accidently started the fire with a kerosene heater. The defendant also "spouted off" about being upset with his ex-wife and daughter and that he should have burned the house; however, the defendant maintained that he did not burn the house. Agent Foster was also present for a second interview with the defendant on October 20, 2005, with Agent Wendell Frost of the Tennessee Bomb and Arson Section and Detective Stephen Spradlin of the Madisonville Police Department.

The investigating officers maintained that the defendant was not in custody for the October 20, 2005 interview; however, they read the defendant his *Miranda* rights, and the defendant signed a written form waiving those rights. The defendant made an oral statement which was written down by Agent Frost. Agent Frost reviewed the statement with the defendant, who signed the statement to verify its accuracy. The statement reflected that the defendant owned the house in question. The defendant stated that Wayne McKeehan approached the defendant about burning the home in order to collect insurance proceeds. The defendant's confession stated that Mr. McKeehan had a reputation for burning houses and that Mr. McKeehan developed a plan to burn the home. The confession reflected that Mr. McKeehan arranged for Mr. Odum to rent the home as part of "the plan." After collecting the insurance money, the defendant gave a portion to Mr. McKeehan. After giving this statement, the defendant left the police station of his own will. The interview was not audio- or video-recorded.

The defendant testified that he had been married to Amber Gee but was divorced and that the two had a daughter, for whom he paid child support. He worked as an independent contractor tractor-trailer truck driver and spent much of his time out-of-state. The defendant maintained that he learned of the fire through Ms. Phillips, the real estate agent, who called him while he was out-of-state on a haul. He maintained that he did not burn his house or file a fraudulent insurance claim.

As for the October 20, 2005 interview, the defendant maintained that he was "a tired Indian" when the law enforcement officers questioned him. He stated that he had been driving through the preceding night and morning and that he had only slept for approximately an hour during the morning leading up to his interview. He stated that he fell asleep throughout the interview. The defendant testified that the agents told him everything in the written confession and that he only signed the confession because he was told he had to sign it in order to leave. He stated that he did

not otherwise believe he was free to leave, and he maintained that one of the agents had a tape recorder. The defendant also represented that he regularly signed any document placed in front of him. The defendant stated that he did not know he was accused of any crime at the time of the interview.

The defendant explained that he bought the house for his ex-wife, her boyfriend, and his daughter. After his ex-wife and her boyfriend broke up, she could not afford the home, and the defendant assumed the payments. After an unsuccessful tenancy by subsequent renters, the defendant rented the home to Mr. Odum. He testified that Mr. Odum approached him inquiring to rent the home. The defendant stated that he had agreed that Mr. Odum could stay at the home rent-free if he kept the home clean for real-estate showings; however, the defendant stated that Mr. Odum had to leave when he found a buyer for the home. The defendant insisted that Mr. Odum presented him with the written lease and that he did not draft the lease. In preparation for selling the home, Arthur Carmley, the defendant's cousin, helped paint the home's living room about two months before it burned. The defendant testified that Ms. Phillips called him the night of September 12 to inform him that Mr. Odum had not vacated the house.

The defendant acknowledged that he deposited the insurance proceeds and withdrew nearly $10,000 in cash; however, he stated that, with the money, he repaid his sister $6,000 for a loan and paid Mr. McKeehan $40 that he owed for work on a lawnmower. The defendant maintained that he stored the remaining $3,960 at his home; however, he could not find it. The defendant acknowledged that, at the time the house burned, he was paying on three mortgages and a loan on his truck.

Merdice Weise was both the defendant's ex-mother-in-law and current bookkeeper. She testified that she prepared the defendant's taxes and performed his general bookkeeping. She testified that the defendant dutifully paid child support and often made payments in excess of those required. She also testified that the defendant's daughter accrued a high credit card balance, which the defendant voluntarily paid. George Coode, a certified public accountant, confirmed that the defendant paid on a substantial credit card debt. He also testified that the defendant benefitted in the amount of $35,600 by receiving the insurance proceeds after the house burned rather than closing the scheduled sale of the home.

Several defense witnesses testified that the defendant kept his promises and was reliable.

After a four-day trial, the jury convicted the defendant of arson, conspiracy to commit arson, and submitting a fraudulent insurance claim. The trial court held a sentencing hearing on April 3, 2007.

Sentencing Hearing

At the sentencing hearing, Mr. Tullis of Travelers Insurance testified that the total claim paid on the house was $123,585 and that Travelers Insurance suffered more than $9,000 in

expenses in handling the claim. He further noted that Travelers Insurance had not recouped any money from the defendant.

Chief Tallent acknowledged that, by the time firefighters arrived at the scene on September 13, 2005, the 12 responding firefighters faced a "free burning" fire. He explained that this is the most dangerous stage of a fire, burning at more than 1,000 degrees. He further explained that the firefighters' protective gear only protects from heat ranging from 800 to 1,000 degrees. Chief Tallent testified that, at the "free burning" stage, he concentrates on preventing the fire from spreading to other homes. He noted that no other home caught fire but that the grass beside the home caught fire.

Detective Stephen Spradlin testified that he observed the vinyl siding melting on the side of a home north of the defendant's house. He observed the owner of the home spraying the wall with his household garden hose to prevent further damage. He also noted that grass and dead leaves around the defendant's home also caught fire. Detective Spradlin testified that, to his knowledge, none of the conspirators knew that Mr. Long, the exterminator, was scheduled to inspect the home on the night the fire was set.

Agent Robert Watson of the Tennessee Bomb and Arson Section testified that his jurisdiction included all of East Tennessee, comprised of 39 counties. He stated that he received 43 calls involving arson from Monroe County in 2006, second only to Cocke County with 44 arson calls. He explained that in 2004, Monroe County ranked number 14 among arson calls, and that number had increased to the second most calls by 2006. He further explained that at least one insurance company refused to provide coverage for certain areas of Monroe County due to the frequency of arson and fires. Agent Watson also testified about the danger of free-burning fires, stating that the fires can become so hot that water can no longer extinguish the flames and that the fire can engulf everything in its path.

The defendant presented Mr. Odum, who testified that he pleaded guilty to arson involving the burning of the defendant's home. He explained that he, Mr. McKeehan, and the defendant conspired to burn the home and that the defendant was a "silent partner" in the plan. Mr. Odum testified that Mr. McKeehan approached him to rent the defendant's house. Mr. McKeehan explained to Mr. Odum that he would live in the house rent-free and leave at an unspecified time. Mr. Odum testified that he was not supposed to know who owned the home; however, after he moved into the home, he discovered that the defendant owned the property. Mr. Odum and the defendant were familiar with each other through driving tractor-trailer trucks together. Mr. Odum maintained that he never approached the defendant to rent the house.

Mr. Odum testified that the plan to burn the home included his signing a lease agreement and acquiring renter's insurance. He testified that the defendant approached him with the lease agreement, stating it was needed to help "the plan."

Mr. Odum stated that at 3:00 p.m. on September 13, 2005, he received a call from Mr. McKeehan telling him to leave the home by 6:00 p.m. After the call, Ms. Phillips, the realtor, visited him at the home to ask him to vacate the premises in preparation for the closing of the sale of the

house the following day. At that point, he called Mr. McKeehan explaining what Ms. Phillips had told him, and Mr. McKeehan responded, "Don't worry about it, Odum, do as you are told." Mr. Odum vacated the premises.

The defendant also presented the testimony of two employers, John James and Marvin Hunt, as well as several family members. The testimony generally regarded the defendant's work ethic, his character, and his willingness to work to pay back the insurance money. The defendant testified at the hearing that he did not commit the offense; however, he maintained that he would work faithfully to repay Travelers if given alternative sentencing. He further noted that the only way that he could pay any restitution was to drive his tractor-trailer truck out-of-state.

Sean-Patrick Moore prepared the defendant's presentence report. The report reflected that the defendant had obtained his general educational development degree and had no prior criminal convictions. Mr. Moore testified that the defendant was generally cooperative; however, he noted that the defendant was "less than forth coming" in providing information regarding his finances.

The trial court considered enhancement and mitigating factors, and it found that no enhancement or mitigating factors affected the conspiracy or fraud convictions. With regard to the arson conviction, the court specifically determined that the defendant was not a leader in the commission of the offense. However, the trial court found that the offense involved more than one victim, *see* T.C.A. § 40-35-114(3) (2006), noting the damage to the neighbor's home and the loss of the insurance company. Further, the trial court noted Agent Watson's and Chief Tallent's assessments of the danger of the fire and determined that the defendant had no hesitation about committing a crime when risk to human life was high. *See id.*§ 40-35-114(10). The court found no mitigating factors in reference to the defendant's arson conviction.

The trial court imposed an enhanced sentence of five years' incarceration for the arson conviction. The trial court imposed an eight-year sentence for the fraud conviction and a two-year sentence for the conspiracy conviction, and it ordered that all the sentences be served concurrently.

The trial court then considered whether confinement or an alternative form of sentencing was appropriate. The court noted that confinement was not necessary to protect society from the defendant, noting the defendant worked hard and cared for his family. The trial court also noted that the defendant had no criminal record and no record of unsuccessful attempts at alternative punishment. However, the trial court noted Agent Watson's testimony about the growing problem of arson in Monroe County and reasoned that imposing any measure less restrictive than confinement would depreciate the seriousness of the offense and send a bad message to the community. Further, the trial court found that the defendant lacked remorse and refused to accept responsibility and that this showed a lack of potential for rehabilitation. Upon considering these factors, the trial court denied alternative sentencing and ordered the defendant's sentences to be served in the Tennessee Department of Correction.

The court also ordered $123,485 in restitution payments to Travelers Insurance. The court entered judgments reflecting the convictions and sentences on April 3, 2007. The defendant filed a timely motion for new trial on May 2, 2007; however, he failed to state any grounds for his motion, only asking for "leave to amend or modify this Motion and to present materials in support thereof" at the motion hearing. The trial court denied the motion for new trial on May 25, 2007, and we have neither any record of the motion hearing nor any document reflecting that the defendant substantiated his May 2, 2007 motion with any grounds for new trial. The defendant filed a notice of appeal on June 22, 2007.

Issues on Appeal

The defendant appeals on three grounds. First, he argues that the trial court erred by failing to include a jury instruction regarding unrecorded extrajudicial statements by a defendant "in light of evolving judicial standards." Next, he argues that the defendant's sentence is excessive and that the trial court erred in considering "lack of remorse as an enhancement factor in determining defendant's sentence or amenability to alternative sentencing." Lastly, we note that, although not presented as issues, the defendant's brief attempts to re-litigate the issues of whether his confession should have been suppressed and whether he should have been permitted to present expert evidence to the jury regarding the defendant's ability to understand his *Miranda* rights.

I. Jury Instructions

The defendant argues that our state's appellate courts should "follow the lead" of the Massachusetts Supreme Court by "using its supervisory powers so that when unrecorded statements are offered into evidence, the jury must be instructed that 'the State's highest court has expressed a preference that (custodial) interrogations be recorded whenever practicable.'" *See Commonwealth v. DiGiambattista*, 813 N.E.2d 516 (Mass. 2004). The defendant further argues that, in light of other states' requiring recording of custodial interrogations, this court should "find that the trial court committed clear error in not doing so in [d]efendant's case."

There are several shortcomings in the defendant's argument. First, the defendant failed to present this proposed jury instruction at trial and did not object to the trial court's failure to provide such an instruction. Before he will be entitled to relief, a defendant challenging the omission of an instruction must make a special request that the instruction be given or otherwise object to the omission. *See* Tenn. R. Crim. P. 30(a), (b); *State v. Cravens*, 764 S.W.2d 754, 757-58 (Tenn. 1989); *State v. Haynes*, 720 S.W.2d 76, 84-85 (Tenn. Crim. App. 1986); *Bolton v. State*, 591 S.W.2d 446, 448 (Tenn. Crim. App. 1979). Next, we note that the defendant failed to include any reference to such an argument in his motion for new trial. *See* Tenn. R. App. P. 3(e) (stating that "in all cases tried by a jury, no issue presented for review shall be predicated upon error in . . . jury instructions granted or refused, . . . or other ground upon which a new trial is sought, unless the same was specifically stated in a motion for a new trial; otherwise such issues will be treated as waived"); *State v. Martin*, 940 S.W.2d 567, 569 (Tenn. 1997) (holding that a defendant relinquishes the right to argue on appeal any issues that should have been presented in a motion for new trial but were not raised in the motion); *State v. Dodson*, 780 S.W.2d 778, 780 (Tenn. Crim. App. 1989). Moreover, although the defendant urges that such an instruction be used in cases involving custodial

interrogation, he does not contend on appeal that he was in custody during the October 20, 2005 interrogation, and the trial court specifically found that the interrogation was not custodial as evidenced by the defendant's departure following the interview. As such, we conclude that the defendant has waived the issue on appeal.

II. Sentencing Issues

The defendant argues that his sentence is excessive and that he should have received an alternative sentence. First, he notes that it was improper for the trial court to consider enhancement factor 40-35-114(9), use of a deadly weapon, because arson inherently requires the use of a deadly weapon. Next, he argues that the "ranking" of Monroe County as the county with the second-highest number of reports of arson in East Tennessee was "misleading." Lastly, the defendant argues that the trial court erred in considering his lack of remorse in concluding he was not amenable to rehabilitation.

When there is a challenge to the length, range, or manner of service of a sentence, it is the duty of this court to conduct a de novo review of the record with a presumption that the trial court's determinations are correct. *State v. Ashby*, 823 S.W.2d 166, 169 (Tenn. 1991). This presumption is "conditioned upon the affirmative showing in the record that the trial court considered the sentencing principles and all relevant facts and circumstances." *Id.* "The burden of showing that the sentence is improper is upon the appellant." *Id.* In the event the record fails to demonstrate the required consideration by the trial court, review of the sentence is purely de novo. *Id.* If appellate review reflects that the trial court properly considered all relevant factors and if its findings of fact are adequately supported by the record, this court must affirm the sentence, "even if we would have preferred a different result." *State v. Fletcher*, 805 S.W.2d 785, 789 (Tenn. Crim. App. 1991).

A review of the sentencing hearing shows that the trial court, on the record, considered all mitigating and enhancing factors, *see* T.C.A. §§ 40-35-113, -114, and we will review the record with a presumption that the trial court correctly sentenced the defendant, *see Ashby*, 823 S.W.2d at 169. The trial court explicitly stated that it only found that enhancement factors applied to the defendant's arson conviction. Because no enhancement or mitigating factors applied to the fraud, a Class B felony, and the conspiracy, a Class D felony, the trial court appropriately ordered sentences at the minimum of the range. *See* T.C.A. § 40-35-112 (assigning a minimum sentence of eight years for a Range I, Class B felony offender and two years for a Range I, Class D felony offender); *Id.* § 40-35-210(c)(1) (advising the trial court to impose the minimum sentence within a range when no mitigating or enhancement factors apply). As for the defendant's arson conviction, the court explicitly found, and noted on the judgment form, that it increased the defendant's sentence from the minimum sentence of three years for a Range I, Class C felony conviction to five years because the offense involved more than one victim and risked human life. *See id.* §§ 40-35-114(3), (10). As for the defendant's argument that the trial court erred by considering enhancement factor 40-35-114(9) in determining the length of the defendant's sentence, we note that the court did not use this factor in enhancing his sentence. The trial court acted within its discretion in determining the length of the defendant's sentences.

Next we address whether the trial court erred by denying alternative sentencing. The defendant was convicted of Class B, C, and D felonies. Although the defendant enjoys no favorable status for his Class B felony conviction, as the recipient of Class C and D felony convictions, he is considered a favorable candidate for alternative sentencing. T.C.A. § 40-35-102(6). "[F]avorable status consideration," however, does not equate to a presumption of such status. *State v. Carter*, 254 S.W.3d 335, 347 (Tenn. 2008). Rather, sentencing issues are determined by the facts and circumstances presented in each case. *State v. Taylor*, 744 S.W.2d 919, 922 (Tenn. Crim. App. 1987). As the recipient of sentences of ten years or less, the defendant is also eligible for probation. *See* T.C.A. § 40-35-303(a). The defendant bore the burden of showing that he was entitled to probation. *See, e.g.*, *State v. Mounger*, 7 S.W.3d 70, 78 (Tenn. Crim. App. 1999) (holding that defendant bears the burden of establishing his "suitability for full probation").

To determine the appropriate combination of sentencing alternatives that shall be imposed on the defendant, the court shall consider the following:

> (1) The evidence, if any, received at the trial and the sentencing hearing;
> (2) The presentence report;
> (3) The principles of sentencing and arguments as to sentencing alternatives;
> (4) The nature and characteristics of the criminal conduct involved;
> (5) Evidence and information offered by the parties on the mitigating and enhancement factors set out in §§ 40-35-113 and 40-35-114;
> (6) Any statistical information provided by the administrative office of the courts as to sentencing practices for similar offenses in Tennessee; and
> (7) Any statement the defendant wishes to make in the defendant's own behalf about sentencing.

T.C.A. § 40-35-210(b). Additionally, "[t]he potential or lack of potential for the rehabilitation or treatment of the defendant should be considered in determining the sentence alternative." *Id.* § 40-35-103(5).

The trial court considered applicable sentencing principles on the record in determining the defendant's manner of service, and we accord the court's decision a de novo review with a presumption of correctness. *See Ashby*, 823 S.W.2d at 169. The trial court reasoned that "to grant alternative sentencing would depreciate [the seriousness of the offense and] make[] the community think it's less than what it is." The court noted that Monroe County had a disproportionate amount of arson crime and cited Agent Watson's testimony regarding the amount of arson complaints received in the county. The defendant challenges Agent Watson's testimony as misleading; however, the weight accorded his testimony is within the discretion of the trial court. The trial court acted within its province in considering depreciating the seriousness of the offense and providing an effective deterrent in denying alternative sentencing. *See* T.C.A. § 40-35-103(1)(B).

The trial court, in denying alternative sentencing, also determined that the defendant was not amenable to correction. *See id.* § 40-35-103(5) ("The potential or lack of potential for the rehabilitation or treatment of the defendant should be considered in determining the sentence alternative or length of a term to be imposed."). The defendant argues that the court erred in interpreting his post-verdict insistence of innocence as a lack of remorse. He essentially argues that making such an inference runs afoul of his right against self-incrimination. We disagree. It is well-settled that a defendant's lack of remorse may be considered in determining his amenability to correction. *State v. Dowdy*, 894 S.W.2d 301, 306 (Tenn. Crim. App. 1994); *State v. Brian Charles LaDue*, No. E2006-02560-CCA-R3-CD, slip op. at 8 (Tenn. Crim. App., Knoxville, July 21, 2008). Further, we note that the defendant testified at his trial as well as at his sentencing hearing, thus waiving his right against self-incrimination. *State v. Hudson*, 631 S.W.2d 716, 719 (Tenn. Crim. App. 1981) ("Once a defendant takes the stand, he becomes a witness for all purposes, and he waives his right against self-incrimination."). The trial court obviously agreed with the jury's verdict and discredited the defendant's testimony regarding his innocence. It is within the sentencing court's province to declare a witness's testimony incredible and draw negative inferences therefrom. We will not disturb the trial court's denial of alternative sentencing.

III. Admissibility of Confession

Although not specifically raised as appellate issues, the defendant's brief mentions two additional grounds of error. First, the defendant "challenges the admissibility of his 'confession' of October 20, 2005." Secondly, he argues that he "was faced with the consequences of his 'confession' without the ability to bring to the jury's attention the wide ranging social science research that could inform the jury's understanding of the phenomenon of false confessions because of limiting rulings from the [t]rial [c]ourt." We note that neither of these evidentiary issues were presented in the defendant's motion for new trial and have therefore been waived. *See* Tenn. R. App. P. 3(e). Further, as already stated, these assignments of error were not properly presented as issues for review and were placed within the introduction of his brief. *See* Tenn. R. App. P. 27(a)(4) (requiring an appellant brief shall contain a statement of issues presented for review). We decline consideration of these assignments of error.

Conclusion

In light of the foregoing analysis, we affirm the judgments of the trial court.

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JAMES CURWOOD WITT, JR., JUDGE